

Module 3

TITLE TRAINING

Evidence of Title



Presenter:

Lands and Realty Title Training
BLM National Training Center
Phoenix Arizona



Module 3: Evidence of Title



Module 3 Learning Objectives

Module 3 covers various forms of acceptable title evidence as well as the statutory authority to review title. By the end of this module, you will be able to:

1. Explain how the agencies are delegated the [authority to review title](#).
2. List the qualities of [acceptable preliminary title evidence](#), according to *The Attorney General's Title Regulations (2016)*.
3. Name the main [categories of title evidence](#).
4. Describe the [four kinds of documentation](#) commonly used in title reviews.
5. Explain why the United States negotiated a [federal form of title insurance](#).
6. Demonstrate an awareness of the current [ALTA US Policy](#).



Statutory Authority for Title Review:

The United States has a long and rich history of reviewing title for land acquisitions. In 1841, Congress passed a law, *40 U.S. Code § 3111 - Approval of sufficiency of title prior to acquisition*, that states the United States must review the title of any property, or interest in property, acquired by the United States.

40 U.S.C. 3111(a) gave the responsibility for title review to the **Attorney General** of the United States, through the **Department of Justice (DOJ)**. Although the law originally contemplated only the purchase of lands or interest in lands, the Attorney General has broadly interpreted this law as applying to **all land transactions** where the United States acquires title to lands or interest in lands, by whatever means.

“Public money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property.”

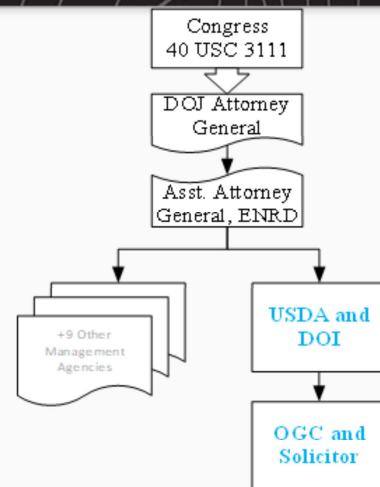


Module 3: Evidence of Title – Delegated Authority for Title Review

Delegated Authority:

Prior to 1970, all land acquisitions for all federal agencies were reviewed by the Attorney General. In 1970, the Attorney General delegated to the **Assistant Attorney General, Environment and Natural Resources Division (ENRD)**, the authority and responsibility to review titles and to delegate review authority to other agencies (40 U.S.C. 255).

The Assistant Attorney General then delegated that authority to ten land management agencies, including the **Department of Agriculture**, through its **Office of the General Counsel (OGC)**. (The remaining federal agencies, such as the Environmental Protection Agency, do not have delegated authority and must go through DOJ to obtain title reviews.)



**Delegations of Title Review
Authority from the Department
of Justice**



Module 3: Title Evidence – Delegated Authority for Title Review

Attorney General's Title Regulations:

On December 20, 2016, the Attorney General issued ***Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016)***. These regulations are commonly referred to as ***The Attorney General's Title Regulations (2016)***.

These regulations replace all earlier title regulations of the Attorney General, including those adopted in Order No. 440-70, dated October 2, 1970, as amended in 1974 and 1990, and the *Department of Justice Title Standards (2001)*.

All federal agencies are required to follow these regulations.



[*The Attorney General's Title Regulations \(2016\)* is available from the Department of Justice](#)



Knowledge Check

Key concept and regulation to remember

Delegations of authority and

The Attorney General's Title Regulations (2016).



What is Evidence of Title?

Evidence of Title is the means by which ownership of property is satisfactorily demonstrated, within a given jurisdiction. In other words, **evidence of title tells us who owns a property and who may have any claims against the property.**

This documentation is found by:

- A review of the **public records**,
- A **property investigation**, and
- A review of other supplemental or **supporting documents**.



Module 3: Evidence of Title – What is Title Evidence?

Cost of Title Evidence:

Public Law 91-646 states:

“The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner’s title to the real property.”

These costs (including title evidence) can be negotiated with the landowner, provided negotiations are voluntary. The United States cannot condition the land transaction on the landowner paying these costs.



Module 3: Evidence of Title – Knowledge Check

Knowledge Check

Can you answer this question?

Where is documentation is found when reviewing evidence of title?



Module 3: Title Evidence – Review of the Public Records

Review of the Public Records:

Public records consist of any information, minutes, files, accounts or other documents which a governmental body is required to maintain, and which must be accessible to scrutiny by the public. These include:

- Recorded deeds
- Court records
- Land surveys

It would be too costly and time consuming for the federal government to conduct its own reviews of the public records, simply because of the sheer volume of records. Therefore, it is standard practice to obtain this documentation from a **title insurance company** or **abstracting attorney** who specializes in analyzing the content of the public records.



Four Types of Documentation:

There are four basic types of documentation that may be used to document the review of the public records:

- **Title Insurance Policy**
- **Title Commitment**
- **Preliminary Title Report**
- **Abstract**



Each of these forms of documentation are prepared by a title company or specialized abstracting attorney.

Read on to learn more about each of these documents.



Module 3: Title Evidence – Review of the Public Records

Types of Documentation:

- **Title insurance**: Insurance which protects the buyer or landowner and their heirs or assigns against title defects, liens, and encumbrances to real property existing as of the date of the policy.
- **Title commitment**: Identifies **the current owner** of the property, **describes the property** being acquired, **lists all encumbrances** and/or outstanding rights of record, has a requirements page, and obligates the insurer to issue a policy for a specific **premium amount** (it is binding).
- **Preliminary title report**: A report prepared prior to issuing a policy of title insurance. It shows the ownership of a specific parcel of land, together with any liens and encumbrances thereon which would not be covered under a subsequent title insurance policy.
- **Abstract of title**: A concise statement, usually prepared for a Mortgagee or Purchaser of the history of a piece of land real property, summarizing the history of a piece of land.



Module 3: Title Evidence – Review of the Public Records

Types of Documentation:

A [title insurance policy](#) is the **preferred form** of documentation and is used in over 95% of all federal land acquisitions.

The title insurance policy:

- Protects against loss or damage resulting from defects or failure of a title, or the enforcement of liens against it, and
- Confirms that the title is vested properly in the United States

It's important to note that the federal government is self-insured and has **no authority to delegate insurance to a third party**, such as a title insurance company. Therefore, the insurance aspect is incidental to the government's needs, but is a part of the package offered by the title insurance industry.



Module 3: Title Evidence – Review of the Public Records

Types of Documentation:

A [title commitment](#) is issued prior to the issuance of a title insurance policy. It obligates the insurer to issue a title insurance policy for a **specified price**, or *premium*. Nearly always, the commitment contains the conditions that must be met for the insurance to go into and remain in effect.

The title commitment:

- Identifies **the current owner** of the property
- **Describes the property** being acquired
- **Lists all encumbrances** and/or outstanding rights of record,
- Has a requirements page, and
- Obligates the insurer to issue a policy for a specific **premium amount (it is binding)**.



Obtain a title commitment **early** in the land acquisition process



Module 3: Title Evidence – Review of the Public Records


Types of Documentation:

A [preliminary title report](#) is similar to a title commitment; however, it is non-binding and **does not** commit the title company to issue a title insurance policy. The preliminary title report is one of the most common forms of documentation and is used exclusively in some regions of the United States.

Like the title commitment, the preliminary title report:

- Identifies the **current owner** of the property
- Lists all **encumbrances** and outstanding rights of record, and
- **Describes the property** being acquired.



 While not preferred, a preliminary title report may be used where customary, and upon prior approval of the reviewing attorney.



Module 3: Title Evidence – Review of the Public Records

Types of Documentation:

An **abstract** is a condensed history of title to a particular parcel of real estate, consisting of a summary of the original grant or patent and all subsequent conveyances and encumbrances. **The abstract is also referred to as an *abstract of title* or *chain of title*.**

The abstract:

- Identifies the **current owner** of record,
- Describes any **encumbrances** on the property.
- Contains **no guarantee of title or current ownership**
- **Does not provide title insurance**



Abstracts were commonly used by the agencies through the 1950s and are still occasionally used for property acquisitions with outstanding mineral interests or water rights, or other situations where the title company is unwilling to issue title insurance.



The use of an abstract must be approved by the reviewing attorney prior to the start of the acquisition process.



Module 3: Title Evidence & Review of the Public Records – Knowledge Check

Knowledge Check

Key concepts and terms to remember

- Title evidence
- Review of the public records
- Abstract
- Preliminary title report
- Title commitment
- Title insurance policy





Federal Form of Title Insurance:

The following pages describe the history of the ALTA US Policy, the federal form of title insurance adopted by the United States and negotiated with the American Land Title Association (ALTA). It was first negotiated in 1963 and most recently revised in 2012.

(ALTA U.S. Policy 9-28-91 (Revised 12-3-12))





Background: ALTA US Policy:

Prior to 1963, the federal government usually used abstracts in land acquisitions. However, abstracts are costly and time-consuming. Title insurance is generally the most convenient, reliable and cost-effective form of title documentation available.

So, in 1963, to streamline the land acquisition process, the United States negotiated a special form of title insurance policy with the American Land Title Association (ALTA) that was named the **ALTA-US Policy – 1963**. In this form of policy, the title insurance policy was issued up-front instead of a title report or title commitment.

Once title transferred to the United States, the title company would issue an endorsement to the policy as of the date of recording the deed, showing title vested in the United States.

Module 3: Title Evidence – Review of the Public Records



The 1963 process caused a great deal of confusion because it was so different from real estate industry standards. The government would order a title policy (which acted like a title commitment), then request that it be endorsed (amended) once the deed was recorded. This process was confusing and unfamiliar to title companies, whose dealings with the federal government comprised only about one percent of their overall business.

So, In 1991, the Department of Justice and ALTA negotiated a **revised form of policy that aligns with the industry standard**, meaning that the federal government first purchases a title commitment, followed by a title insurance policy.

That version of title insurance policy was identified as the **ALTA US Policy – 9/28/91**. The old 1963 form of title policy was phased out and was discontinued as of December 31, 1995.





Background: ALTA US Policy:

In 2012, the Department of Justice negotiated with ALTA and approved a **change** to the 1991 policy, which excludes creditor's rights coverage.

The revised policy is referred to as either the **ALTA US Policy 9/28/91 (Revised 12/3/12)** or as the **ALTA US Policy Revised 12/3/12**.

As with the old 1963 form, the 1991 form of policy was phased out and was discontinued as of **January 31, 2015**.





Background: ALTA US Policy

Because Texas strictly regulates the title insurance industry, the ALTA U.S. Policy 9/28/91 (Revised 12/3/12) form of title policy has **not** been adopted for use in that state.

👉 For this reason, in Texas, the federal government is using the TLTA T-11 and T-12 forms. See *The Attorney General's Title Regulations (2016)* for instructions on the use of this form of title insurance.



Module 3: Title Evidence – Knowledge Check

Knowledge Check

Key policy to remember

ALTA US Policy.



Module 3: Title Evidence – Property Inspections

Property Inspections:

Property inspections include **interviews** with the landowner and **physical inspections** of the property. The inspection must be conducted to determine if there are any potential claims against the property that do not appear in the public record.

These may include:

- Encroachments
- Licenses
- Leases and Permits, or
- Adverse possession claims

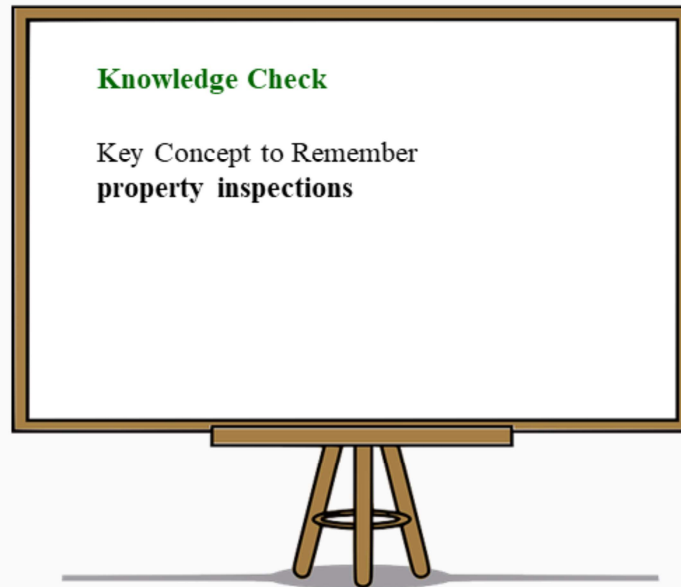
The physical inspection is generally conducted by an employee who is familiar with the requirements. This could be the **Realty Specialist** in charge of the transaction, or another employee familiar with the property.



Physical inspection
of the property



Module 3: Title Evidence – Knowledge Check



Module 3: Title Evidence – Other Documents

Other Supplemental and Supporting Documents:

Occasionally, the reviewing attorney will need other supplemental and supporting documents to clarify uncommon situations such as deaths, corporations, or trusts.

Supporting documents may include:

- Wills
- Trust documents
- Corporate authority documents, or
- Death certificates



This concludes the learning content for Module 3.



Module 3: Title Evidence – Summary

Title Evidence Summary:

Module 3 focused on title evidence used in the title review process, as well as the statutory and delegated authority to do so. The information covered in this module will be helpful to you when you are asked to:

- Explain how the agencies are [delegated the authority to review title](#), from Congress to the Department of Justice, and finally to the DOI and USDA.
- Name the **main categories of title evidence**: [review of the public records](#), [property inspections](#) and [other supplemental and supporting documents](#).
- Describe the four kinds of [documentation](#) typically used in title reviews: [abstracts](#), [preliminary title reports](#), [title commitments](#), and [title insurance policies](#).
- Explain that the United States negotiated a [federal form of title insurance](#) because title insurance is the most convenient, reliable and economical form of documentation available.
- Demonstrate an awareness of the [ALTA US Policy 9/28/91 \(Revised 12/3/12\)](#).

